IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SOUTHCO DEVELOPMENT, LLC

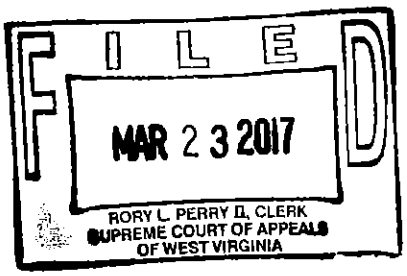
Plaintiff,

V.

CIVIL ACTION NO. 16-C-575

MONONGALIA COUNTY
DEVELOPMENT AUTHORITY,
LARSON DESIGN GROUP, INC.
AND HOLLY CHILDS,

Defendants.



THE DEFENDANT, MONONGALIA COUNTY DEVELOPMENT AUTHORITY'S REPLY MEMORANDUM TO PLAINTIFF'S MOTION TO REFER MATTER TO BUSINESS COURT DIVISION

The Defendant, the Monongalia County Development Authority (the MCDA) brings the following response to the Plaintiff's Motion to Refer Matter to Business Court Division. The MCDA argues that this case is not proper for the Business Court as it does not involve a complex commercial litigation case between business entities. Additionally, this case does not raise issues involving a high level of complexity, novelty or other issues requiring specialized treatment. Finally, this case involves a non-business entity defendant, Ms. Holly Childs, who was sued in her individual capacity.[1]

The Plaintiff filed this action in The Circuit Court of Monongalia County, West Virginia, alleging the following causes of action against some or all of the Defendants:

(a) Breach of Contract;

(b) Promissory Estoppel;

(c) Unjust Enrichment;

[1] Ms. Holly Childs is an employee and agent of the MCDA.

GIANOLA, BARNUM,
BECHTEL & JECKLIN, L.C.
Attorneys at Law

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(d) Fraud;

(e) Fraudulent Misrepresentation;

(f) Tortious Interference with a Contractual and Business Relationship;

(g) Negligence; and

(h) Negligent Misrepresentation;

See Exhibit A, Complaint. The essence of the Plaintiff's Complaint is allegations that the Defendants' misrepresented who owned coal deposits underneath the subject property in Monongalia County, West Virginia, and misrepresented that the City of Morgantown had approved mass shipments of the coal, thereby causing the Plaintiff to suffer economic loss.

The MCDA Answered the Plaintiffs' Complaint and filed a counterclaim against the Plaintiff alleging as follows:

(a) Tortious Interference with a Contract and Business Relationship;

(b) Negligence;

(c) Trespass; and

(d) Private Nuisance.

See Exhibit B, MCDA's Answer and Counterclaim.

On March 6, 2017, the Plaintiff moved to refer this matter to the Business Court Division.

Importantly, the Business Court Division was created to handle disputes presenting "commercial and/or technological issues" in which specialized treatment will be likely to "improve the expectation of a fair and reasonable resolution of the controversy because of the *need for specialized knowledge or expertise*" in the subject

matter of the controversy (emphasis added). West Virginia Trial Court Rules 29.04 (a)(2). Accordingly, Business Court Division Chairman, the Honorable Christopher C. Wilkes, writes that the Business Court docket is designed to handle complex commercial litigation cases between businesses. See Exhibit C, Judge Christopher C. Wilkes, West Virginia's New Business Court Division: An Overview of the Development and Operation of Trial Court Rule 29, W. Va. Law., January-March 2013, at 40.

Furthermore, Judge Wilkes writes that the Business Court Division is reserved for "cases which have a high level of complexity, novel issues or other issues requiring specialized treatment." *Id.* at 42. In fact, Business Court Division judges are to undertake and will continue undertaking special training in areas involving the administration and governance of business entities, as well as other issues unique to litigation between businesses. *Id.* Therefore, the Business Court Division is to develop case management "methodologies" for efficiently resolving these complex business cases, including more complex discovery and scheduling orders, case management techniques, and mediation possibilities. *Id.* at 43.

In this case, the facts surrounding the Plaintiff's pled causes of action do not involve a high level of complexity, novel issues, issues requiring specialized treatment, in which judges should receive special training. This is not a case that needs complex discovery, scheduling orders, and case management techniques. This is a straight-forward case regarding the Plaintiff's allegations that the Defendants' misrepresented to it who owned coal deposits underneath subject property in Monongalia County, West Virginia, and misrepresented that the City of Morgantown had approved mass shipments of the coal thereby causing the Plaintiff to suffer economic loss.

Moreover, in Paragraph 10 of the Plaintiff's Motion it does not present any facts supporting its allegations that this case involves complex commercial or technology issues requiring specialized treatment or that specialized knowledge or experience is needed to understand the issues in this case. The Plaintiff just simply rewrites the language contained in the West Virginia Trial Court Rules without a scintilla of evidence supporting its argument that complexities in this case require its removal to Business Court.

Additionally, the references in Paragraph 13 of the Plaintiff's Motion that third-party collection agencies, which are not parties to this case, have sued the Plaintiff and are contacting it about alleged outstanding debt, although potentially true, are designed to distract this Court from the real issue at hand -- does the Plaintiff's case against the Defendants present complex litigation issues requiring a judge with specialized knowledge or training? The answer is no. Importantly, The Texas Tea Fuel Services, LLC v. Steve Southern, case cited by the Plaintiff in its Motion is its own separate litigation. The Plaintiff has not moved to consolidate the Texas Tea Fuel Services, LLC case with this case therefore it is irrelevant for consideration with this Motion. Again, it was only referenced in the Plaintiff's Motion to distract the Court.

Simply put, this case does not meet the criteria for removal to the Business Court Division. The Honorable Phillip D. Gaujot, in The Circuit Court of Monongalia, County, West Virginia, is capable of presiding over this matter and a jury can adequately decide these issues.

Finally, this case does not involve solely business entities as the Plaintiff sued Holly Childs in her individual capacity alleging fraudulent misrepresentation and

negligence. West Virginia Trial Court Rules 29.04 (a) (1) provides that for a case to be referred to Business Court it should be a principal claim or claims involving matters significant "to the transactions, operations, ... between business entities." Although she serves as Director of the MCDA, the MCDA does not represent Ms. Childs–she was sued in her individual capacity—and she is entitled to litigate the claims against her in a circuit court before a jury of her peers and not in a Business Court solely before a judge.

THEREFORE, the Defendant, The Monongalia County Development Authority respectfully request that the Court deny the Plaintiff's Motion to Refer Matter to Business Court Division.

THE MONONGALIA COUNTY
DEVELOPMENT AUTHORITY,
By Counsel,

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IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

SouthCo Development, LLC

Plaintiff,

v.

MONONGALIA COUNTY DEVELOPMENT AUTHORITY, LARSON DESIGN GROUP, INC., and HOLLY CHILDS, an individual,

Defendants.

Civil Action No. 16-C-575
Judge _____

COMPLAINT

COMES NOW the Plaintiff, SouthCo Development, LLC (hereinafter "SouthCo"), by and through its counsel Debra Tedeschi Varner, Michael A. Secret, and the law firm of McNeer, Highland, McMunn and Varner, LC, and for its complaint against the Defendants, Monongalia County Development Authority, Larson Design Group, and Holly Childs, avers as follows:

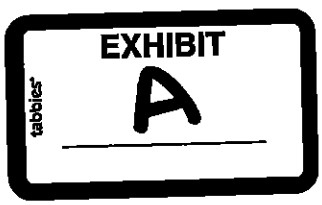
PARTIES

1. SouthCo is a West Virginia limited liability corporation with its principal place of business in Mount Clare, West Virginia.

2. Upon information and belief, the Monongalia County Development Authority (hereinafter "MCDA") is a political subdivision organized and authorized pursuant to West Virginia Code § 7-12-7 with its principal place of business in Morgantown, West Virginia.

3. Upon information and belief, Larson Design Group, Inc. (hereinafter "Larson") is a Pennsylvania corporation licensed to business in the state of West Virginia with an office in Morgantown, West Virginia.

4. Upon information and belief, Holly Childs (hereinafter "Childs") is an individual residing in Morgantown, West Virginia.



JURISDICTION AND VENUE

5. SouthCo incorporates by reference, as if fully set forth herein, Paragraphs 1 through 4 above.

6. This court has personal jurisdiction over Plaintiff SouthCo as it is a private West Virginia corporation doing business in the state of West Virginia.

7. This court has personal jurisdiction over Defendant MCDA as it is a public West Virginia corporation doing business in the state of West Virginia.

8. This court has personal jurisdiction over Defendant Larson under W. Va. Code § 56-3-33 (the West Virginia Long-Arm Statute) subsections (1) transacting business in the state of West Virginia and (2) contracting to supply services or things in the state of West Virginia.

9. This court has personal jurisdiction over Defendant Childs as she is an individual residing within the state of West Virginia.

10. Venue is appropriate in this court pursuant to West Virginia Code § 56-1-1.

FACTUAL BACKGROUND

11. SouthCo incorporates by reference, as if fully set forth herein, Paragraphs 1 through 10 above.

12. In late June of 2015, Larson began talks with SouthCo through SouthCo President, Stephen Southern (hereinafter "Southern") to extract coal from a 95.7 acre parcel of land (hereinafter "the Property") for MCDA so the property could be built into a new development named the I-68 Commerce Park.

13. SouthCo was later informed that the Coal Lease covered another 26.6 acres owned by Airpark, LLC, bringing the total acreage of the project up to 122.3 acres.

14. In early July, 2015, Southern began discussions with SouthCo's coal broker, RFI Energy and Ralph Wingrove, who confirmed that they would be able to attain coal orders for the project. Subsequently, SouthCo submitted a coal extraction proposal to Larson to be attached with Larson's own proposal to MCDA to build the I-68 Commerce Park.

15. On July 17, 2015, SouthCo was informed that MCDA had accepted Larson's bid for the I-68 Commerce Park and, therefore, SouthCo would be extracting the coal from the Property.

16. On August 12, Larson then emailed Southern with an update on the progress of the project. Southern was informed by Larson that certain third-parties had suggested that SouthCo begin work on the coal extraction, and the earthwork could begin at a later date depending on the ascertainment of federal approvals.

17. On August 31, 2015, SouthCo performed test digs on the Property for the purpose of coal analysis which was approved by Larson and MCDA.

18. On October 23, 2015, Larson informed SouthCo that SouthCo could begin coal extraction as soon as SouthCo was able to obtain a business license from the City of Morgantown. Southern delivered the completed business license application to the City of Morgantown and was informed by the License and Fire Fee clerk that the Property did not require a business license as it was not within the city corporate limits.

19. On or about October 26, Larson obtained a building permit from the City of Morgantown and SouthCo began bringing the necessary equipment onto the job site.

20. On November 6, 2015, SouthCo attained a brush burning permit.

21. Also on November 6, SouthCo received their first draft of the coal removal agreement (hereinafter "the Agreement").

22. The Agreement explicitly states that "MCDA owns or controls the Coal within, upon, and underlying the property.

23. However, in a subsequent intergovernmental agreement between the City of Morgantown and MCDA authorizing the sale of coal underneath the property, the City of Morgantown stresses that it is they, and not MCDA, that owns the coal under the property. The City of Morgantown would actually be selling the coal that SouthCo extracted to MCDA.

24. On November 25, SouthCo began construction on a temporary access road that was paid for by MCDA. The temporary access road was completed on December 4.

25. On December 11, 2015, Larson informed SouthCo that they had been in attendance at a Federal Aviation Administration (hereinafter "FFA") meeting in Beckley, West Virginia, along with Childs, the director of MCDA, and Glen Kelly (hereinafter "Kelley"), the Assistant City manager for the City of Morgantown and interim airport director. Larson informed SouthCo to continue with the project, which SouthCo was led to believe had already been approved by Glen Kelly, the City of Morgantown, and all other applicable parties.

26. On December 23, the West Virginia Department of Environmental Protection (hereinafter "WV DEP") instructed SouthCo to delay all coal shipment until there was a permit exemption. Larson and Childs gave SouthCo permission to continue all other work aside from hauling coal off the job site and also to begin building a blasting barrier for future coal removal.

27. On January 4, 2016, SouthCo emailed MCDA stating that it had been seven weeks since the Agreement was emailed to MCDA for comments and MCDA had yet to provide a response.

28. On January 14, MCDA informed SouthCo that the Agreement was approved. MCDA instructed SouthCo's attorney to obtain Southern's signature on the agreement and then MCDA's attorney would give the Agreement to MCDA to sign.

29. On January 15, SouthCo received a verbal approval from WV DEP to ship 2000 tons of test burn coal to Lehigh Cement. SouthCo began shipping said coal on January 17.

30. On January 20, 2016, Larson informed SouthCo that MCDA had approved Sauls Seismic's pre-blasting survey and that MCDA preferred that Sauls Seismic be the blasting subcontractor under SouthCo. Larson also informed SouthCo that they would be compensated for the blasting survey.

31. On January 21, Larson received official permit exemption from the WV DEP. Between January 21 and February 1, 2016, SouthCo resumed shipping coal to three different locations.

32. On February 10, SouthCo contacted MCDA inquiring as to the status of the Agreement, which had been sent to MCDA a month prior to sign. MCDA responded that the Agreement had still not been signed.

33. On February 11, Childs informed SouthCo that the FAA was being difficult with signing off on the coal removal. Childs further stated that MCDA would help cover the monthly costs of SouthCo's coal removal and, if the FAA did not sign off on the coal removal, then MCDA would allow SouthCo to have a contract to remove dirt on the Property so as to keep the project moving along. Childs also instructed Southern to continue shipping coal from the stockpile and working on the blast barrier.

34. On February 15, at a meeting at the Morgantown Airport, SouthCo was informed by Kelly that the City of Morgantown had only authorized a 300 ton test burn, far below the amount

that SouthCo had previously shipped out. Kelly also informed Southern that if Southern would have contacted him that he would have told him that an environmental assessment had to be completed with the FAA before any coal removal could begin, but SouthCo's point of contact had always been either Larson or Childs. Childs instructed SouthCo to shut down all operations until MCDA could resolve the matter.

35. On February 18, SouthCo received official notice from the City of Morgantown to cease all operations.

36. On February 29, SouthCo received official notice from MCDA to cease all operations.

37. By March 14, 2016, MCDA approved full payment on SouthCo's invoice for the pre-blast survey, but only a partial payment of $5,906.00 for the stone placed on the access road in regard to the blasting barrier. MCDA did not approve SouthCo's biggest expense of building the blasting barrier, which cost $238,888.00. In refusing to pay for the blasting barrier, MCDA told SouthCo that those costs should have been part of the coal removal contract.

38. In addition, SouthCo took on the following approximate outstanding expenses and costs as an order of normal, daily operating expenses throughout the course of this project prior to the agreement being terminated:

a. Texas Tea Fuel Services, LLC: **$10,518.**

b. Loans financed by IPFS Corporation and obtained through Clarksburg Associates, LLC: **$4,508.**

c. Fees to Standard Laboratories, Inc.: **$6,974.**

d. Morgantown Power Equipment, Inc.: **$12,975.**

e. Black Diamond: **$4,225**

f. Cleveland Brothers: **$1,586**

g. Rish Equipment: **$37,065**

h. Jim Christie, Sr. legal fees: **$16,707**

i. Morgantown Septic: **$122**

j. RMS: **$373**

k. Komatsu 490: **$24,786**

l. Komatsu 360: **$31,256**

m. Expenses incurred for removal 552,593 cubic yards of dirt: **$1,405,061.77.**

39. These current outstanding accounts and costs total to **$1,556,156.77.**

40. SouthCo, in reliance on the project, took out the following loans, which are now outstanding due to the stoppage of the project:

a. Loan from Ralph Wingrove and RFI Energy: **$65,000-$70,000**

b. Loan from Clear Mountain Bank on a bulldozer: **$18,000**

c. Loan from Clear Mountain Bank on house: **$50,000**

41. These current outstanding loan balances total to: **$133,000-$138,000**

42. Due to the stoppage of the project, SouthCo was unable to fill three separate coal order agreements with its coal broker, RFI Energy. Such coal order agreements are as follows:

a. Shipping to Key Con Fuels from 2/1/16 to 1/31/17, up to 3000 tons per month at a price to SouthCo of **$22.75** PNT FOB. The value of this contract was approximately **$819,000** per year.

b. Shipping to Grant Town as directed, up to 6000 tons per month at a price to SouthCo of **$15.90** NT FOB plus premiums. The value of this contract was approximately **$1,144,800** per year.

c. Shipping to Lehigh Cement from the dates of 1/1/16 to 12/31/16 up to 2000 tons per month at a price to SouthCo of **$15.90** NT FOB plus premiums. The value of this contract was approximately **$720,000** per year.

43. Additionally, due to the money and time that SouthCo has expended on this project that has not come to fruition, SouthCo has been unable to gather up the resources to perform any work. Though multiple opportunities have presented themselves, SouthCo does not have the resources to commit to such jobs because so much of their time and financial resources were entangled with the project in question.

44. Furthermore, due to the various obligations and commitments that SouthCo was forced to rescind because of the stoppage of the project, SouthCo has experienced substantial damage to its reputation with its coal brokers, subcontractors, banks, equipment companies, insurance companies, and employees. As a direct result of this damaged reputation, SouthCo has been unable to secure work that it would have been able to secure had the project been completed as expected.

COUNT 1 – BREACH OF CONTRACT AGAINST MCDA

45. SouthCo incorporates by reference, as if fully set forth herein, Paragraphs 1 through 44 above.

46. Through multiple recognitions of the Agreement as the controlling document in the business relationship between SouthCo and MCDA, the Agreement was a valid and enforceable contract.

47. SouthCo agreed to and performed its obligations under the Agreement as requested by the Defendants to prepare the land for blasting and also to start proceedings for coal removal and shipping.

48. MCDA breached the material terms of the Agreement by calling for SouthCo to cease work on the project after SouthCo had partially performed under the Agreement and after SouthCo had expended a large amount of time, money, and effort into the project.

49. SouthCo is entitled to be placed in the same position that they would have been had the contract been performed.

50. Therefore, SouthCo is entitled to the amount that they would have profited had they performed all of their duties under the Agreement, including the amount that SouthCo would have made selling the first 250,000 tons of coal along with whatever amount they would have made selling coal afterwards while paying royalty fees to MCDA in an amount to be determined at trial.

COUNT 2 – PROMISSORY ESTOPPEL AGAINST MCDA

51. SouthCo incorporates by reference, as if fully set forth herein, Paragraphs 1 through 50 above.

52. Even if the Agreement is not found to be a valid contract, MCDA still made a representation to SouthCo that SouthCo would perform the obligations of and be responsible for removing the coal from underneath the property. The understanding was that SouthCo would be paid for rendering all of the work performed.

53. MCDA knew or should have known that SouthCo would reasonably rely on this representation that MCDA would compensate them for the coal removal being done to the Property.

54. Furthermore, MCDA, through its agent Childs, made multiple representations to SouthCo that the project would be continuing and that MCDA would pay for SouthCo's invoices and expenses during the delays in the project.

55. In relying on these representations to their detriment, SouthCo incurred various expenses such as leasing coal extraction equipment, building a blasting wall, lab services, commercial fuel services, taking out a line of credit, and obtaining a $3 liability insurance policy.

56. Justice requires that SouthCo be compensated for its reasonable reliance on MCDA's false claims.

COUNT 3 – UNJUST ENRICHMENT AGAINST MCDA

57. SouthCo incorporates by reference, as if fully set forth herein, Paragraphs 1 through 56 above.

58. Even if the agreement is not found to be a valid contract, SouthCo performed coal hauling and other services on the Property to the benefit of MCDA and MCDA's interests in the Property.

59. MCDA has full and appropriate knowledge of the benefitted the SouthCo provided to the Property through services SouthCo rendered.

60. MCA has accepted, retained, and taken advantage of the services rendered and the benefit conferred by SouthCo.

61. The circumstances are such that it would inequitable for MCDA to retain the services rendered and the benefit conferred without paying fair value for it.

COUNT 4 – FRAUD AGAINST MCDA

62. SouthCo incorporates by reference, as if fully set forth herein, Paragraphs 1 through 61 above.

63. In the Agreement, MCDA claimed that they were the owners of the coal present in the Property which SouthCo had agreed to excavate and ship out.

64. However, this information was false, as the coal actually belonged to the City of Morgantown, and MCDA knew or should have known that said representations were false.

65. SouthCo relied on MCDA's representations and it was reasonable to believe that the coal in the Property belonged to MCDA when it was actually owned by the City of Morgantown.

66. The acts and conduct of MCDA constitute fraud, a proximate result of which SouthCo has been damaged.

COUNT 5 – FRAUDULANT MISREPRESENTATION AGAINST MCDA

67. SouthCo incorporates by reference, as if fully set forth herein, Paragraphs 1 through 66 above.

68. As set forth in the Agreement, MCDA made the representation to SouthCo that the coal underneath the Property was owned and thus controlled by MCDA.

69. However, the coal was actually owned and controlled by the City of Morgantown as per the Ordinance.

70. When MCDA made their representation of ownership to SouthCo, such representation was known to be false.

71. Such false representation was made with the intention that SouthCo rely on the false representation.

72. SouthCo did rely on such false representation, as evidenced by their signing the agreement and extracting and shipping coal from underneath the property at the behest of MCDA even though the coal did not belong to MCDA.

73. As a result of the reliance on this representation, SouthCo suffered damages as it performed various duties in extracting coal that was not actually owned by MCDA.

74. Additionally, MCDA, by and through its agent Childs, made multiple representations to SouthCo that the project was to be approved by the FAA and the City of

Morgantown. Furthermore, she instructed that SouthCo should continue working on the project on multiple occasions.

75. In reality, Kelly and the City of Morgantown had yet to approve such mass shipment of coal because the FAA's environmental evaluation was not complete. Kelly would go on to order a Stop Work order on the project on February 15, 2016, due to this lack of approval.

76. When MCDA, by and through its agent Childs, made these representations to SouthCo, such representations were knowingly false.

77. Such false representations were made with the intention that SouthCo rely on the false representations.

78. SouthCo did rely on the false representations, as evidenced by their signing the Agreement and continuing to extract coal from underneath the property at the behest of MCDA and Childs.

79. As a result of the reliance on these false representations, SouthCo suffered damages as it performed various duties under a contract that, unbeknownst to them, was not approved.

80. SouthCo's reliance on MCDA's and Childs' representation was a substantial factor in causing its harm.

COUNT 6 – TORTIOUS INTERFERENCE WITH A CONTRACTUAL AND BUSINESS RELATIONSHIP AGAINST MCDA

81. SouthCo incorporates by reference, as if fully set forth herein, Paragraphs 1 through 80 above.

82. A contractual and business relationship existed between SouthCo and their coal broker RFI Energy, as RFI Energy is contracted by SouthCo to broker coal sales for the purpose of transacting business involving coal in various markets.

83. By breaching the Agreement for SouthCo to excavate and ship coal, MCDA intentionally interfered with the relationship between SouthCo and RFI Energy.

84. In the project at hand, RFI Energy had already confirmed and acquired coal orders for the extraction and shipping that would be taking place on the Property.

85. MCDA's interference caused further damage to SouthCo by causing SouthCo to incur expenses and charge RFI Energy for a project that had since been discontinued. SouthCo must still address the aforementioned coal orders without any coal that was able to be lawfully extracted from the property.

86. As a result of this tortious interference with SouthCo's contractual and business relationship with RFI energy, SouthCo suffered damages.

87. Because of said reliance on the false provision of the contract, SouthCo entered into the Agreement which MCDA then breached.

88. Because of said breach, SouthCo suffered reliance and compensatory damages.

COUNT 7 – NEGLIGENCE AGAINST MCDA

89. SouthCo incorporates by reference, as if fully set forth herein, Paragraphs 1 through 88 above.

90. As set forth in the Agreement, MCDA made the representation to SouthCo that the coal underneath the Property was owned and thus controlled by MCDA.

91. However, the coal was actually owned and controlled by the City of Morgantown as per the Ordinance.

92. MCDA had a duty and obligation to inform SouthCo that the coal underneath the Property belonged to the City of Morgantown.

93. MCDA knew or should have known that the coal belonged to the City of Morgantown and that SouthCo would rely on this representation.

94. MCDA breached this duty by representing to SouthCo that the coal underneath the property belonged the MCDA.

95. SouthCo did rely on such false representation, as evidenced by their signing the agreement and extracting and shipping coal from underneath the property at the behest of MCDA even though the coal did not belong to MCDA.

96. As a result of the reliance on this representation, SouthCo suffered damages as it performed various duties in extracting coal that was not actually owned by MCDA.

97. The abovementioned actions on behalf of MCDA constitute negligence.

98. Additionally, MCDA, by and through its agent Childs, made multiple representations to SouthCo that the project was to be approved by the FAA and the City of Morgantown. Furthermore, she instructed that SouthCo should continue working on the project on multiple occasions.

99. In reality, Kelly and the City of Morgantown had yet to approve such mass shipment of coal because the FAA's environmental evaluation was not complete. Kelly would go on to order a Stop Work order on the project on February 15, 2016, due to this lack of approval.

100. MCDA, by and through its agent Childs, had a duty and obligation to keep SouthCo informed as to the viability of their work on the Property, including any FAA environmental evaluations that needed to be completed to continue the project.

101. MCDA, by and through its agent Childs, breached this duty by failing to inform SouthCo as to the required FAA environmental evaluations that needed to be completed to continue the project.

102. MCDA, by and through its agent Childs, knew or should have known that such FAA environmental evaluations were required before SouthCo could continue work on the property.

103. SouthCo did rely on these representations, as evidenced by their signing the Agreement and continuing to extract coal from underneath the property at the behest of MCDA and Childs.

104. As a result of the reliance on these representations, SouthCo suffered damages as it performed various duties under a contract that, unbeknownst to them, was not approved.

105. SouthCo's reliance on MCDA's and Childs' representation was a substantial factor in causing its harm.

106. The abovementioned actions by MCDA, by and through its agent Childs, constitute negligence.

COUNT 8 – NEGLIGENT MISREPRESENTATION AGAINST LARSON

107. SouthCo incorporates by reference, as if fully set forth herein, Paragraphs 1 through 106 above.

108. On December 11, 2015, Larson made the representation to SouthCo that Kelly had approved the shipment of what coal SouthCo had on hand.

109. In reality, Kelly and the City of Morgantown had yet to approve such mass shipment of coal because the FAA's environmental evaluation was not complete. Kelly would go on to order a Stop Work order on the project on February 15, 2016, due to this lack of approval.

110. Although Larson may have honestly believed that Kelly had approved the project, Larson had no reasonable grounds for believing the representation was true when they made such representation.

111. Larson intended SouthCo to rely on this representation.

112. SouthCo did reasonably rely on Larson's representation.

113. As a result of the reliance on this representation, SouthCo suffered damages as it expended a large amount of money and effort into performing on an obligation that was, unknown to them, not approved.

114. SouthCo's reliance on Larson's representation was a substantial factor in causing its harm.

COUNT 9 – FRAUDULENT MISREPRESENTATION AGAINST LARSON

115. SouthCo incorporates by reference, as if fully set forth herein, Paragraphs 1 through 114 above.

116. On December 11, 2015, Larson made the representation to SouthCo that the assistant city manager for the City of Morgantown Kelly had approved the shipment of what coal SouthCo had on hand.

117. In reality, Kelly and the City of Morgantown had yet to approve such mass shipment of coal because the FAA's environmental evaluation was not complete. Kelly would go on to order a Stop Work order on the project on February 15, 2016, due to this lack of approval.

118. When Larson made this representation to SouthCo, such representation was known to be false.

119. Such false representation was made with the intention that SouthCo rely on the false representation.

120. SouthCo did rely on such false representation, as evidenced by their signing the Agreement and extracting and shipping coal from underneath the property.

121. As a result of the reliance on this representation, SouthCo suffered damages as it expended a large amount of money and effort into performing on an obligation that was, unbeknownst to them, not approved.

122. SouthCo's reliance on Larson's representation was a substantial factor in causing its harm.

COUNT 10 – FRAUDULENT MISREPRESENTATION AGAINST CHILDS

123. SouthCo incorporates by reference, as if fully set forth herein, Paragraphs 1 through 122 above.

124. On February 11, 2016, Childs informed SouthCo that, if the FAA would not be willing to sign off on the coal removal, MCDA would give SouthCo a dirt contract so as to keep SouthCo performing duties on the site. Additionally, Childs made multiple representations that the project would continue.

125. However, in actuality, MCDA only owned a plow-depth of the dirt on the Property and it was not within Childs' authority to designate such a duty to SouthCo. Furthermore, the FAA had not provided their needed approval to the project.

126. When Childs made these representations to SouthCo, such representations were known to be false.

127. Such false representations were made with the intent SouthCo rely on such false representations.

128. SouthCo did reasonably rely on Childs' false representations, as evidenced by their continued work on the project after the representations were made by Childs.

129. As a result of the reliance on these false representation, SouthCo suffered damages as it expended a large amount of money and effort under the belief that they would still be able to

keep the project going and that they would be able to obtain a dirt contract if the project was delayed.

COUNT 11 – NEGLIGENCE AGAINST CHILDS

130. SouthCo incorporates by reference, as if fully set forth herein, Paragraphs 1 through 129 above.

131. On February 11, 2016, Childs informed SouthCo that, if the FAA would not be willing to sign off on the coal removal, MCDA would give SouthCo a dirt contract so as to keep SouthCo performing duties on the site. Additionally, Childs made multiple representations that the project would continue.

132. However, in actuality, MCDA only owned a plow-depth of the dirt on the Property and it was not within Childs' authority to designate such a duty to SouthCo. Furthermore, the FAA had not provided their needed approval to the project.

133. Childs had a duty and obligation to correctly inform SouthCo as to the ability for MCDA to offer SouthCo a dirt contract and also to correctly inform SouthCo of any required FAA approval needed for the project.

134. Childs breached this duty by failing to inform SouthCo that MCDA did not have the ability to offer SouthCo a dirt contract and

135. Childs knew or should have known that MCDA was not able to give out the abovementioned dirt contract and that FAA approval was needed for the project, but had yet to be obtained.

136. SouthCo did reasonably rely on Childs' representations, as evidenced by their continued work on the project after the representations were made by Childs.

137. As a result of the reliance on these representations, SouthCo suffered damages as it expended a large amount of money and effort under the belief that they would still be able to keep the project going and that they would be able to obtain a dirt contract if the project was delayed.

138. The abovementioned actions by Childs constitute negligence.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, SouthCo Development, LLC, demands

1. compensatory damages;
2. punitive damages;
3. consequential damages;
4. pre-judgment and post-judgment interest;
5. attorney fees and costs; and,
6. other such relief as this court deems just and proper.

SOUTHCO DEVELOPMENT, LLC
By counsel:

Debra Tedeschi Varner (WV State Bar #6501)
Michael A. Secret (WV State Bar #13044)

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McNeer, Highland, McMunn and Varner, LC
Of Counsel

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

SOUTHCO DEVELOPMENT, LLC.

Plaintiff,

vs. CIVIL ACTION NO.: 16-C-575

MONONGALIA COUNTY DEVELOPMENT AUTHORITY, LARSON DESIGN GROUP, INC.; And HOLLY CHILDS, an individual,

Defendants.

THE DEFENDANT, MONONGALIA COUNTY DEVELOPMENT AUTHORITY'S ANSWER TO THE PLAINTIFF'S COMPLAINT AND MORE DEFINITE STATEMENT, COUNTER-CLAIM AND CROSS CLAIM

The Defendant, the Monongalia County Development Authority (MCDA), through its counsel, James A. Gianola and David M. Jecklin, with the law firm Gianola, Barnum, Bechtel & Jecklin, provide the following Answer to the Plaintiff, SouthCo Development, LLC's (SouthCo) Complaint and More Definite Statement of Fraud and Fraudulent Misrepresentation.

FIRST DEFENSE

The Plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Regarding the specific allegations contained in SouthCo's Complaint, the MCDA answers as follows:

PARTIES

1. The MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraph 1 of the Complaint.

GIANOLA, BARNUM, BECHTEL & JECKLIN, L.C.
Attorneys at Law
(304) 291-8300

EXHIBIT B

2. The MCDA admits the allegations contained in Paragraph 2 of the Complaint.

3. The MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraph 3 of the Complaint.

4. The MCDA admits that the Defendant, Holly Childs, is the executive director of the MCDA. Based on information and belief, the Defendant, Holly Childs resides in Morgantown, West Virginia. The MCDA denies the remaining allegations contained in Paragraph 4 of the Complaint.

JURISDICTION AND VENUE

5. Paragraph 5 of the Complaint does not require a response from the MCDA. However, to the extent that a response is required the MCDA denies all claims contained in Paragraph 5 of the Complaint.

6. The allegations contained in Paragraph 6 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraphs 6.

7. The MCDA admits the allegations contained in Paragraphs 7.

8. The allegations contained in Paragraph 8 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraphs 8.

9. The allegations contained in Paragraph 9 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA admits that based upon its understanding and belief Defendant, Holly Childs resides in West Virginia.

10. The allegations contained in Paragraph 10 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraphs 10.

FACTUAL BACKGROUND

11. Paragraph 11 of the Complaint does not require a response from the MCDA.

However, to the extent that a response is required the MCDA denies all claims contained in Paragraph 11 of the Complaint.

12. The MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraph 12 of the Complaint as they are directed towards actions allegedly taken by Defendant, Larson Design Group, LLC (Larson).

13. The MCDA denies the allegations contained in Paragraph 13 of the Complaint to the extent that it alleges that a Coal Lease existed as there was never a "Coal Lease" between the parties. The MCDA is without sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 13 of the Complaint as it is written.

14. The MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraph 14 of the Complaint as they are directed at specific actions of SouthCo and its president.

15. The MCDA denies the allegations contained in Paragraph 15 of the Complaint.

16. The MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraph 16 of the Complaint as they are directed towards actions allegedly taken by Larson. To the extent that a response is required MCDA denies that it is the third-party referred to in Paragraph 16 of the Complaint.

17. The MCDA does provide a limited admission to the allegations contained in Paragraph 17 of the Complaint that SouthCo performed test digs on the Property. However, the MCDA denies any allegations that it approved the test digs on the Property. The MCDA is without sufficient knowledge to admit or deny any remaining allegations contained in Paragraph 17 of the Complaint as it is written.

18. The MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraph 18 of the Complaint as they are directed towards actions allegedly taken by Larson and SouthCo's president.

19. The MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraph 19 of the Complaint as they are directed towards actions allegedly taken by Larson.

20. The MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraph 20 of the Complaint as they are directed towards specific actions of SouthCo.

21. The MCDA denies the allegations contained in Paragraph 21 of the Complaint.

22. The MCDA denies the allegations contained in Paragraph 22 of the Complaint as there was never an enforceable Agreement between the parties.

23. The MCDA denies the allegation contained in Paragraph 23 of the Complaint as the intergovernmental agreement was related to surface coal that was improperly and potentially illegally mined by SouthCo and stockpiled on the surface of the Commerce Park. It is this stockpile of coal that is causing environmental issues and potential monetary penalties.

24. The MCDA admits the allegations contained in Paragraph 24 of the Complaint to the extent that it paid SouthCo for the development of an access road to the commerce park. The MCDA is without sufficient knowledge to admit or deny the remaining allegations in Paragraph 24 of the Complaint.

25. The MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraph 25 of the Complaint as they are directed towards actions allegedly taken by Larson. However, the MCDA does admit that based upon information and belief Defendant, Holly Childs and Glenn Kelly attended the FAA meeting in Beckley, West Virginia.

26. The MCDA is without sufficient knowledge to admit or deny a portion of the allegations contained in Paragraph 26 of the Complaint as they are directed towards actions allegedly taken by the West Virginia Department of Environmental Protection (WV DEP). To the remaining allegations in Paragraph 26 of the Complaint, as they may be construed to be related to the MCDA, it denies the remaining allegations.

27. The MCDA states that any email referred to in Paragraph 27 of the Complaint would speak for itself. However, to the extent that Paragraph 27 states that there was an agreement between the parties the MCDA denies there was ever an enforceable agreement.

28. The MCDA denies the allegations in contained in Paragraph 28 of the Complaint that there was ever an enforceable agreement between the parties.

29. The MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraph 29 of the Complaint as they are directed towards actions allegedly taken by the WV DEP.

30. The MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraph 30 of the Complaint as they are directed towards actions allegedly taken by Larson.

31. The MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraph 31 of the Complaint as they are directed towards actions allegedly taken by Larson.

32. To the extent that Paragraph 32 of the Complaint states that there was an agreement between the parties the MCDA denies there was ever an enforceable agreement.

33. The MCDA is without knowledge to admit or deny the allegations contained in Paragraph 33 of the Complaint as to what Defendant, Holly Childs allegedly said to SouthCo. The MCDA adamantly denies that it agreed to cover additional costs of any kind or authorized the shipment of coal removal.

34. The MCDA is without sufficient knowledge to admit or deny a portion of the allegations contained in Paragraph 34 of the Complaint as they are directed towards actions allegedly taken by Larson and the City of Morgantown's assistant city manager. To the remaining allegations in Paragraph 34 the MCDA is without knowledge to admit or deny what Defendant, Holly Childs allegedly said to SouthCo.

35. The MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraph 35 of the Complaint as they are directed towards actions allegedly taken by the City of Morgantown.

36. The MCDA admits the allegations contained in Paragraph 36 of the Complaint that SouthCo was directed to cease its operations.

37. The MCDA admits the allegations contained in Paragraph 37 of the Complaint that it paid for the stone placed on the access road, that it approved the invoice for the pre-blast survey, and that it never authorized payment of the blasting barrier. The MCDA denies any remaining allegations contained in Paragraph 37 of the Complaint including that the blasting barrier was in any way part of the access road.

38. The MCDA denies the allegations contained in Paragraph 38 of the Complaint.

39. The MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraph 39 of the Complaint. However, the MCDA provides a limited admission to the math skills of SouthCo that Paragraph 38 (a) through (m) adds up to "$1,556,156.77" and that is the same number listed in Paragraph 39.

40. The MCDA denies the allegations contained in Paragraph 40 of the Complaint.

41. The MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraph 41 of the Complaint. However, the MCDA provides a limited admission to the math skills of SouthCo that Paragraph 40 (a) through (c) adds up to "$133,000 - $138,000" and that is the same number listed in Paragraph 39.

42. The MCDA denies the allegations contained in Paragraph 42 of the Complaint.

43. The MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraph 43 of the Complaint.

44. The MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraph 44 of the Complaint.

COUNT 1
BREACH OF CONTRACT AGAINST MCDA

45. Paragraph 45 of the Complaint does not require a response from the MCDA.

However, to the extent that a response is required the MCDA denies all claims contained in Paragraph 45 of the Complaint.

46. The MCDA denies the allegations contained in Paragraph 46 of the Complaint.

47. The MCDA denies the allegations contained in Paragraph 47 of the Complaint.

48. The MCDA denies the allegations contained in Paragraph 48 of the Complaint.

49. The allegations contained in Paragraph 49 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA denies the allegations contained in Paragraph 49 of the Complaint.

50. The allegations contained in Paragraph 50 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA denies the allegations contained in Paragraph 50 of the Complaint.

COUNT 2
PROMISSORY ESTOPPEL AGAINST MCDA

51. Paragraph 51 of the Complaint does not require a response from the MCDA.

However, to the extent that a response is required the MCDA denies all claims contained in Paragraph 51 of the Complaint.

52. The MCDA denies the allegations contained in Paragraph 52 of the Complaint.

53. The MCDA denies the allegations contained in Paragraph 53 of the Complaint.

54. The MCDA denies the allegations contained in Paragraph 54 of the Complaint.

55. The MCDA denies the allegations contained in Paragraph 55 of the Complaint.

56. The allegations contained in Paragraph 56 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA denies the allegations contained in Paragraph 56 of the Complaint.

COUNT 3
UNJUST ENRICHMENT AGAINST MCDA

57. Paragraph 57 of the Complaint does not require a response from the MCDA.

However, to the extent that a response is required the MCDA denies all claims contained in Paragraph 57 of the Complaint.

58. The MCDA denies the allegations contained in Paragraph 58 of the Complaint.

59. The MCDA denies the allegations contained in Paragraph 59 of the Complaint.

60. The MCDA denies the allegations contained in Paragraph 60 of the Complaint.

61. The allegations contained in Paragraph 61 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA denies the allegations contained in Paragraph 61 of the Complaint.

COUNT 4
FRAUD AGAINST MCDA

62. Paragraph 1 of the Plaintiff's More Definite Statement does not require a response from the MCDA. However, to the extent that a response is required the MCDA denies all claims contained in Paragraph 1 of the More Definite Statement.

63. The MCDA admits that Childs was its director during the course of events between the parties. However, the allegations contained in Paragraph 2 of the Plaintiff's More Definite Statement calls for a legal conclusion for which an answer is not required.

To the extent that an answer may be required, the MCDA denies the allegations contained in Paragraph 2 of the Plaintiff's More Definite Statement.

64. The MCDA denies the allegations contained in Paragraph 3 of the Plaintiff's More Definite Statement as there was never an enforceable Agreement between the parties.

65. The MCDA denies the allegations in contained in Paragraph 4 of the Plaintiff's More Definite Statement as there was never an enforceable agreement between the parties.

66. The MCDA is without knowledge to admit or deny the allegations contained in Paragraph 5 of the Plaintiff's More Definite Statement as to what Defendant, Holly Childs allegedly said to SouthCo. The MCDA adamantly denies that it agreed to cover additional costs of any kind or authorized the shipment or removal of coal.

67. The MCDA denies the allegations contained in Paragraph 6 of the Plaintiff's More Definite Statement.

68. The MCDA denies the allegations contained in Paragraph 7 of the Plaintiff's More Definite Statement.

69. The MCDA denies the allegations contained in Paragraph 8 of the Plaintiff's More Definite Statement.

70. The MCDA denies the allegations contained in Paragraph 9 of the Plaintiff's More Definite Statement.

71. The MCDA denies the allegations contained in Paragraph 10 of the Plaintiff's More Definite Statement.

72. The MCDA denies the allegations contained in Paragraph 11 of the Plaintiff's More Definite Statement.

73. The allegations contained in Paragraph 12 of the Plaintiff's More Definite Statement call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA denies the allegations contained in Paragraph 66 of the Complaint.

COUNT 5
FRAUDULENT MISREPRESENTATION AGAINST MCDA

74. Paragraph 13 of the Plaintiff's More Definite Statement does not require a response from the MCDA. However, to the extent that a response is required the MCDA denies all claims contained in Paragraph 13 of the Plaintiff's More Definite Statement.

75. The MCDA is without knowledge to admit or deny the allegations contained in Paragraph 14 of the Plaintiff's More Definite Statement as to what Defendant, Holly Childs allegedly said to SouthCo. The MCDA adamantly denies that it agreed to cover additional costs of any kind or authorized the shipment or removal of coal.

76. The MCDA is without sufficient knowledge to admit or deny a portion of the allegations contained in Paragraph 15 of the Plaintiff's More Definite Statement as they are directed towards actions allegedly taken by a non-party, the City of Morgantown.

77. The MCDA denies the allegations contained in Paragraph 16 of the Plaintiff's More Definite Statement.

78. The MCDA denies the allegations contained in Paragraph 17 of the Plaintiff's More Definite Statement.

79. The MCDA denies the allegations contained in Paragraph 18 of the Plaintiff's More Definite Statement.

80. The MCDA denies the allegations contained in Paragraph 19 of the Plaintiff's More Definite Statement.

81. The allegations contained in Paragraph 20 of the Plaintiff's More Definite Statement call for a legal conclusion for which an answer is not required. To the extent that a response is required the MCDA denies the allegations contained in Paragraph 20 of the Plaintiff's More Definite Statement.

82. The allegations contained in Paragraph 21 of the Plaintiff's More Definite Statement call for a legal conclusion for which an answer is not required. To the extent that a response is required the MCDA denies the allegations contained in Paragraph 21 of the Plaintiff's More Definite Statement.

COUNT 6
TORTIOUS INTERFERRENCE WITH A CONTRACTUAL AND BUSINESS RELATIONSHIP AGAINST MCDA

83. Paragraph 81 of the Complaint does not require a response from the MCDA.

However, to the extent that a response is required the MCDA denies all claims contained in Paragraph 81 of the Complaint.

84. The MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraph 82 of the Complaint.

85. The MCDA denies the allegations contained in Paragraph 83 of the Complaint.

86. The MCDA is without sufficient knowledge to admit or deny the allegations contained in Paragraph 84 of the Complaint.

87. The MCDA denies the allegations contained in Paragraph 85 of the Complaint.

88. The allegations contained in Paragraph 86 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA denies the allegations contained in Paragraph 86 of the Complaint.

89. The allegations contained in Paragraph 87 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA denies the allegations contained in Paragraph 87 of the Complaint.

90. The allegations contained in Paragraph 88 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA denies the allegations contained in Paragraph 88 of the Complaint.

COUNT 9
NEGLIGENCE AGAINST MCDA

91. Paragraph 89 of the Complaint does not require a response from the MCDA.

However, to the extent that a response is required the MCDA denies all claims contained in Paragraph 89 of the Complaint.

92. The MCDA denies the allegations contained in Paragraph 90 of the Complaint.

93. The MCDA denies the allegations contained in Paragraph 91 of the Complaint.

94. The allegations contained in Paragraph 92 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA denies the allegations contained in Paragraph 92 of the Complaint.

95. The MCDA denies the allegations contained in Paragraph 93 of the Complaint.

96. The allegations contained in Paragraph 94 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA denies the allegations contained in Paragraph 94 of the Complaint.

97. The allegations contained in Paragraph 95 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA denies the allegations contained in Paragraph 95 of the Complaint.

98. The allegations contained in Paragraph 96 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA denies the allegations contained in Paragraph 96 of the Complaint.

99. The allegations contained in Paragraph 97 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA denies the allegations contained in Paragraph 97 of the Complaint.

100. The MCDA denies the allegations contained in Paragraph 98 of the Complaint.

101. The MCDA is without sufficient knowledge to admit or deny a portion of the allegations contained in Paragraph 99 of the Complaint as they are directed towards actions allegedly taken by Larson and the City of Morgantown's assistant city manager. To the extent that an answer may be required, the MCDA denies the allegations contained in Paragraph 99 of the Complaint.

102. The allegations contained in Paragraph 100 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA denies the allegations contained in Paragraph 100 of the Complaint.

103. The allegations contained in Paragraph 101 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA denies the allegations contained in Paragraph 101 of the Complaint.

104. The MCDA denies the allegations contained in Paragraph 102 of the Complaint.

105. The allegations contained in Paragraph 103 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA denies the allegations contained in Paragraph 103 of the Complaint.

106. The allegations contained in Paragraph 104 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may

be required, the MCDA denies the allegations contained in Paragraph 104 of the Complaint.

107. The allegations contained in Paragraph 105 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA denies the allegations contained in Paragraph 105 of the Complaint.

108. The allegations contained in Paragraph 106 of the Complaint call for a legal conclusion for which an answer is not required. To the extent that an answer may be required, the MCDA denies the allegations contained in Paragraph 106 of the Complaint.

COUNT 8
NEGLIGENT MISREPRESENTATION AGAINST LARSON

109. Paragraph 107 of the Complaint does not require a response from the MCDA. However, to the extent that a response is required the MCDA denies all claims contained in Paragraph 107 of the Complaint.

110. The allegations contained in Paragraphs 108 through 114 are directed at the Defendant, Larson. Therefore, the MCDA is not required to respond to these allegations. To the extent that a response is required the MCDA denies the allegations contained in Paragraphs 108 through 114.

COUNT 9
FRAUDULENT MISREPRESENTATION AGAINST LARSON

111. Paragraph 115 of the Complaint does not require a response from the MCDA. However, to the extent that a response is required the MCDA denies all claims contained in Paragraph 115 of the Complaint.

112. The allegations contained in Paragraphs 116 through 122 are directed at the Defendant, Larson. Therefore, the MCDA is not required to respond to these allegations. To the extent that a response is required the MCDA denies the allegations contained in Paragraphs 116 through 122.

COUNT 10
FRAUDULENT MISREPRESENTATION AGAINST CHILDS

113. Paragraph 123 of the Complaint does not require a response from the MCDA. However, to the extent that a response is required the MCDA denies all claims contained in Paragraph 123 of the Complaint.

114. The allegations contained in Paragraphs 124 through 129 are directed at the Defendant, Holly Childs in her individual capacity. Therefore, the MCDA is not required to respond to these allegations. To the extent that a response is required the MCDA denies the allegations contained in Paragraphs 124 through 129.

COUNT 11
NEGLIGENCE AGAINST CHILDS

115. Paragraph 130 of the Complaint does not require a response from the MCDA. However, to the extent that a response is required the MCDA denies all claims contained in Paragraph 130 of the Complaint.

116. The allegations contained in Paragraphs 131 through 138 are directed at the Defendant, Holly Childs in her individual capacity. Therefore, the MCDA is not required to respond to these allegations. To the extent that a response is required the MCDA denies the allegations contained in Paragraphs 131 through 138.

THIRD DEFENSE

The MCDA pleads the affirmative defenses of assumption of risk, comparative negligence, and contributory negligence.

FOURTH DEFENSE

The Plaintiff has or may have failed to mitigate its damages and this affirmative defense is asserted to limit and/or bar the Plaintiff's recovery in this action, if any.

FIFTH DEFENSE

The injuries, losses, or damages as alleged in the Complaint are the result of independent or superseding causes over which the MCDA had no control in or in any way participated.

SIXTH DEFENSE

The Plaintiff's request for punitive damages are barred by the 5th, 8th, and 14th Amendments to the United States Constitution and the corresponding provisions of the Constitution of the State of West Virginia.

SEVENTH DEFENSE

The MCDA acted at all times within its legal rights in the conduct of all activities that are the subject of the Plaintiff's Complaint and with just cause.

EIGTH DEFENSE

The MCDA asserts the affirmative defenses of laches, estoppel, unclean hands, statute of frauds, statute of limitations, lack of good faith, inequitable conduct and waiver.

NINTH DEFENSE

The MCDA asserts all immunities, defenses, and damage limitations available pursuant to the Governmental Torts Claims and Insurance Reform Act. W. Va. Code § 29-12A-1 et seq.

TENTH DEFENSE

All punitive damage claims against the MCDA are barred pursuant to W. Va. Code § 29-12A-7.

ELEVETH DEFENSE

Any claim fraud against the MCDA is barred pursuant to W. Va. Code § 29-12A-5 (a)(12).

TWELFTH DEFENSE

Any breach of contract was by the Plaintiff and not the MCDA.

THIRTEENTH DEFENSE

The breach of contract claim fails for lack of consideration.

FOURTEENTH DEFENSE

There was a failure of conditions precedent as to any contractual obligations against the MCDA.

FIFTEENTH DEFENSE

The breach of contract claim fails as there is a lack of mutual assent or a meeting of the minds.

SIXTEENTH DEFENSE

With regard to fraud the MCDA asserts the affirmative defense of truth.

SEVENTEENTH DEFENSE

The claim of fraud must fail as there was no material misrepresentation.

EIGTHEENTH DEFENSE

The claim of fraud must fail as there was no reasonable reliance.

NINETHEENTH DEFENSE

With regards to the fraud claim, the MCDA asserts that any statements made, if any, were opinions.

TWENTIETH DEFENSE

The MCDA denies that it is liable to the Plaintiff for any negligence, misconduct, carelessness, recklessness, or any intentional actions that proximately caused the Plaintiff's claimed injuries or damages.

TWENTY-FIRST DEFENSE

If the MCDA was guilty of any negligence, which is denied, such negligence was not the proximate or contributing cause of the damages allegedly sustained by the Plaintiff.

TWENTY-SECOND DEFENSE

The MCDA breached no duty at law owed to the Plaintiff.

TWENTY-THIRD DEFENSE

The MCDA reserves the right to raise additional affirmative defenses as they may become apparent through discovery.

WHEREFORE, the Defendant, the Monongalia County Development Authority prays for the following relief:

1. An Order dismissing the Plaintiff's claims;
2. An award of attorney fees and other costs incurred in the defense of this case; and
3. Any further relief this Court deems appropriate.

COUNTERCLAIM AGAINST THE PLAINTIFF, SOUTHCO DEVELOPMENT, LLC

The Defendant, Monongalia County Development Authority (the MCDA) brings the following counterclaim against the Plaintiff, SouthCo Development, LLC (SouthCo).

COUNT I
TORTIOUS INTERFERENCE WITH A CONTRACT AND BUSINESS RELATIONSHIP AGAINST SOUTHCO DEVELOPMENT, LLC

1. As evidenced in Paragraph 12 of SouthCo's Complaint it was aware in late June 2015, that the MCDA owned the surface only of a 95.7 acre parcel of land that it planned to develop into the I-68 Commerce Park.

2. Also, as evidenced in Paragraph 23 of SouthCo's Complaint it was aware that the MCDA and the City of Morgantown had a contractual and business relationship negotiating intergovernmental agreements related to the development of the I-68 Commerce Park.

3. Accordingly, SouthCo was also aware that the MCDA and the City of Morgantown were negotiating an intergovernmental agreement (Expected Agreement)

wherein the City of Morgantown would remove overburden from the surface of the proposed I-68 Commerce Park.

4. Both the City of Morgantown and the MCDA expected to benefit financially from the Expected Agreement as the City of Morgantown planned to use the overburden it removed from the surface of the proposed I-68 Commerce Park in its' runway extension project at the Morgantown Airport and thereby provide developable land to the MCDA by expanding the amount of usable acreage in the I-68 Commerce Park.

5. However, while the City of Morgantown and the MCDA were negotiating the Expected Agreement SouthCo was intentionally, improperly, and potentially illegally removing the subsurface coal from the site of the proposed I-68 Commerce Park.

6. When the Federal Aviation Administration (the FAA) learned that SouthCo was intentionally, improperly, and potentially illegally removing subsurface coal from the site of the proposed I-68 Commerce Park the FAA ordered that the City of Morgantown and the MCDA notify SouthCo to stop its operations.

7. Accordingly, SouthCo's intentionally, improperly, and potentially illegally removing subsurface coal from the site of the MCDA's I-68 Commerce Park which resulted in the FAA stopping SouthCo's operations intentionally interfered with the MCDA's Expected Agreement by stopping the City of Morgantown's runway extension project and causing the MCDA to not receive expanded usable acres of developable land at the I-68 Commerce Park.

8. SouthCo's disrupted MCDA's business relationships with the City of Morgantown and other governmental bodies such as the FAA, the West Virginia Department of Environmental Protection, as well as with Defendant Larson by taking improper or illegal actions such as improperly removing coal from the site of the proposed I-68 Commerce Park.

9. SouthCo's interference with MCDA's contractual and business relationship with the City of Morgantown and other governmental entities has and will continue to harm the MCDA by way of delay and loss of substantial sums of money, future development, advancement of the future development, advancement of the expansion and economic production of the I-68 Commerce Park, and completion of infrastructure.

10. SouthCo's interference also has caused a delay in the Air Force Reserve starting the overburden removal project for the runway extension project.

11. At all times relevant, SouthCo was an outsider and foreigner to the contract and business relationship between the MCDA and the City of Morgantown.

12. SouthCo's actions as described amount to willful, wanton, and reckless behavior in total disregard for the well-being of the MCDA and that punitive damages should be awarded to punish and deter the willful, deliberate actions of SouthCo.

COUNT II
NEGLIGENCE AGAINST SOUTHCO DEVELOPMENT, LLC

13. The MCDA incorporates by reference Paragraphs 1 through 12 above into Count II.

14. As evidenced in Paragraph 24 of SouthCo's Complaint, the MCDA and SouthCo agreed that SouthCo would construct a temporary access road to the proposed I-68 Commerce Park.

15. SouthCo represented to the MCDA that it had the knowledge, skill, experience, training, and expertise to construct the temporary access road.

16. Subsequently, SouthCo constructed the temporary access road.

17. SouthCo had a legal duty to exercise the reasonable and ordinary care, technical skill, ability, and diligence ordinarily required when constructing the temporary access road.

18. Notwithstanding its legal duty, SouthCo negligently breached its duty to exercise the reasonable and ordinary care, technical skill, ability, and diligence required as it did not construct the proper barriers on the temporary access road and has caused silt and acid mine drainage from coal SouthCo mined and placed on the surface of MCDA's proposed I-68 Commerce Park to impact MCDA's real property and the real property of adjacent land owners.

19. As a result of SouthCo's negligence MCDA has incurred Seventeen Thousand Six Hundred Thirty-Two Dollars ($16,732.00) in costs installing silt sock as required by the DEP and the MCDA is facing additional costs and expenses related to cleanup and remediating the real properties effected by the silt and acid mine drainage.

COUNT III
TRESPASS AGAINST SOUTHCO DEVELOPMENT, LLC

20. The MCDA incorporate by reference Paragraphs 1 through 19 above into Count III.

21. In 2016, SouthCo intentionally entered onto the surface of the real property of the MCDA's proposed I-68 Commerce Park for the purpose of removing and shipping subsurface coal.

22. In 2016, SouthCo, after intentionally entering upon the surface of the real

property of the MCDA's proposed I-68 Commerce Park, did remove and ship subsurface coal and did place and store subsurface coal on the surface of the I-68 Commerce Park.

23. At all relevant times in 2016 when SouthCo intentionally entered onto the surface of the real property of the MCDA's proposed I-68 Commerce Park to remove and ship subsurface coal it entered onto the real property and placed and stored the subsurface coal on the real property without the lawful authority from the MCDA.

24. SouthCo's unlawful entry onto the surface of the real property of the MCDA's proposed I-68 Commerce Park and storage and placement of subsurface coal on the real property has caused damage, up to and including silt and acid mine drainage, for which the MCDA is facing costs and expenses related to the cleanup and remediation of the real property effected.

COUNT IV
PRIVATE NUISANCE AGAINST SOUTHCO DEVELOPMENT, LLC

25. The MCDA incorporate by reference Paragraphs 1 through 24 above into Count IV.

26. The MCDA planned to utilize the surface of the real property of its proposed I-68 Commerce Park for economic development.

27. However, SouthCo's intentional and negligent conduct that damaged the surface of the real property of the MCDA's proposed I-68 Commerce Park has substantially and unreasonably invaded and interfered with the MCDA's interest in its use, enjoyment, and development of the proposed I-68 Commerce Park.

WHEREFORE, the Monongalia County Development Authority respectfully request that Judgment be entered against SouthCo Development, LLC, jointly and severely, for the following relief:

a. The cost of repairing the MCDA's proposed I-68 Commerce Park;

b. The fair market value of the MCDA's proposed I-68 Commerce Park before it was damaged;

c. The diminished value of the MCDA's proposed I-68 Commerce Park;

d. The economic cost of developing the MCDA's proposed I-68 Commerce Park to over 95 acres of developable land;

e. Annoyance and inconvenience;

f. Aggravation;

g. Loss of use;

h. Consequential damages;

i. Punitive damages;

j. Lost revenue;

k. Attorney fees and expenses;

l. Costs of this action; and

m. Any other relief which appears just and proper.

CROSS-CLAIM AGAINST THE DEFENDANTS, HOLLY CHILDS AND THE LARSON DESIGN GROUP, INC.

1. To the extent that the damages and losses alleged by the Plaintiff, SouthCo Development, LLC, occurred and give rise to liability, Defendant, MCDA alleges that such damages were caused by the actions of Defendants, Holly Childs and the Larson Design Group, Inc.

2. Accordingly, the MCDA asserts that if judgment is awarded against it, it is entitled to common law contribution and/or indemnification from the Defendants, Holly Childs and/or the Larson Design Group, LLC.

WHEREFORE, in the event that Defendant, MCDA is found to be liable to the Plaintiff, SouthCo Development, LLC, for damages as alleged in the Complaint the MCDA hereby requests relief in the form of contribution and/or indemnity from the Defendants, Holly Childs and/or the Larson Design Group, LLC. Further, the Defendant, MCDA requests that it be awarded such as other relief as the Court deems appropriate.

THE CROSS-CLAIM PLAINTIFF DEMANDS A JURY TRIAL.

MONONGALIA COUNTY DEVELOPMENT AUTHORITY,
By Counsel

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James A. Gianola, Esq. (WV Bar No. 1378)
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IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

SOUTHCO DEVELOPMENT, LLC

Plaintiff,

V. CIVIL ACTION NO. 16-C-575

MONONGALIA COUNTY
DEVELOPMENT AUTHORITY,
LARSON DESIGN GROUP, INC.
AND HOLLY CHILDS,

Defendants.

CERTIFICATE OF SERVICE

I, James A. Gianola, certify that on February 17, 2017 I served a copy of **THE DEFENDANT, MONONGALIA COUNTY DEVELOPMENT AUTHORITY'S ANSWER TO THE PLAINTIFF'S COMPLAINT AND MORE DEFINITE STATEMENT, COUNTER-CLAIM AND CROSS CLAIM** by mailing a copy by United States First Class Mail, postage prepaid, addressed to:

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PLAINTIFF: SOUTHCO DEVELOPMENT, LLC	CASE NUMBER: 16-C-575
DEFENDANTS: MONONGALIA COUNTY DEVELOPMENT AUTHORITY, LARSON DESIGN GROUP, INC.; And HOLLY CHILDS, an individual,	

II. TYPE OF CASE:

TORTS	OTHER	CIVIL
Asbestos	Adoption	Appeal from Magistrate Court
Professional Malpractice	X Contract	Petition for Modification of Magistrate Sentence
Personal Injury	Real Property	Miscellaneous Civil
Product Liability	Mental Health	Other
Other Tort	Appeal of Administrative Agency	

III. JURY DEMAND: __X__Yes _____ No

CASE WILL BE READY FOR TRIAL BY (month/year)_____

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE?
_____Yes __X__No. IF YES, PLEASE SPECIFY:

_____Wheelchair accessible hearing room and other facilities
_____Interpreter or other auxiliary aid for the hearing impaired
_____Read or other auxiliary aid for the visually impaired
_____Spokesperson or other auxiliary aid for the speech impaired
Other: _____

Attorney Name: David M. Jecklin
James A. Gianola
John F. Gianola

Representing: _____ Plaintiffs
__X__ Defendant/
Cross-Claim/Counterclaim Plaintiffs

Firm: Gianola, Barnum, Bechtel & Jecklin
Address: 1714 Mileground
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Telephone: 304-291-6300

Dated: February 17, 2017

Signature

2013-MAR W. Va. Law. 40

West Virginia Lawyer
January-March, 2013

Focal Point

WEST VIRGINIA'S NEW BUSINESS COURT DIVISION: AN OVERVIEW OF THE DEVELOPMENT AND OPERATION OF TRIAL COURT RULE 29

Judge Christopher C. Wilkes[a1]

On Oct. 10, 2012, Justice Robin Jean Davis, on behalf of Chief Justice Menis Ketchum and the Supreme Court of Appeals of West Virginia, formally opened the Business Court Division of Circuit Court in Martinsburg, W.Va. West Virginia Trial Court Rule 29.01 concisely portrays the purpose of the new Business Court Division:
In accordance with West Virginia Code § 51-2-15, there is hereby adopted a process for efficiently managing and resolving litigation involving commercial issues and disputes between businesses that includes the establishment of a Business Court Division to handle a specialized court docket within the circuit courts.

The Business Court Division is the product of a complex and in-depth, yet expedited process. Discussions amongst the judiciary began in 2008 after Justice Brent Benjamin and the Administrative Director, Steven Canterbury, traveled to Delaware to study the operations of the Delaware Chancery Court, one of the oldest and longest operating business courts in America. This study led to House Speaker Rick Thompson introducing House Bill 4352, authorizing the Supreme Court of Appeals to conduct a study and make a recommendation regarding the creation of a business court division. The legislature passed this bill two years later in 2010. [1]

In response to H.B. 4352, the Supreme Court of Appeals established a committee to study the formation of a business court in West Virginia. [2] The Business Court Committee's stated purpose was to explore the feasibility of establishing a specialized court function devoted exclusively to the resolution of commercial disputes as well as its advantages, disadvantages, and parameters. [3] The Court and the committee, in this statement, recognized that business *41 related issues are currently being handled fairly, effectively, and expeditiously; yet, also recognized that there is room for improvement, as there is in any case resolution system.

At the direction of Judge Darrell Pratt, chairman of the committee, the members studied the business courts that exist in other American jurisdictions and discussed how various aspects of those courts were applicable to West Virginia. They also met with various business court judges, undertook informal discussions with various members of the business community and the bar, and engaged in several other areas of study.

The committee was then commissioned to make a recommendation to the Court regarding the establishment of a business court in West Virginia. After further meetings and discussions, the committee chose to solicit input on the creation and implementation of a business court.

On Nov. 12, 2010, the Supreme Court held a public forum in the House of Delegates chamber in Charleston. The keynote speaker at that forum was Honorable Ben F. Tennille, the chief special superior court judge for complex business cases in

North Carolina. Judge Tennille is a recognized leader in business court administration and created the nations first statewide business court in January of 1996. Judge Tennille's remarks were well received by members of the business community, the bar, and the legislative leaders.

The committee next undertook further study of the practical possibilities for a business court and developed a preliminary draft of the rule governing business court litigation. On Sept. 30, 2011, the business court committee met with an invited group of attorneys and others representing businesses across West Virginia in a day-long session in Charleston. At this meeting, input and suggestions were received and the second draft of the proposed rule was discussed. Further revision was undertaken, with those suggestions again in mind, which led to a third draft of the new rule.

Thereafter, this third draft was presented to the Supreme Court of Appeals with a recommendation by the committee that the Supreme Court of Appeals establish a business court division.

The Supreme Court of Appeals, on Feb. 9, 2012, issued an order requesting public comment on the proposed additions to the West Virginia Trial Court Rules that were recommended by the Business Court Committee.[4] After closing the public comment period on May 11, 2012, the Justices of the Court, led by Justice Robin Jean Davis, and members of the committee reviewed the comments and made changes to the initial proposal in response to the suggestions received and created the final draft of West Virginia Trial Court Rule 29.

On Sept. 11, 2012, by unanimous vote, the Supreme Court of Appeals approved West Virginia Trial Court Rule 29 creating the Business Court Division to be effective Oct. 10, 2012.[5] The Court ordered that the headquarters be established in the Berkeley County Judicial Center in Martins burg, West Virginia, in the space formerly occupied by the 23rd Judicial Circuit Law Library.[6] The establishment of the Business Court Division headquarters in Martinsburg marks the first division of the Supreme Court of Appeals to be headquartered outside of the Charleston area.

Also on Sept. 11, 2012, Chief Justice Menis Ketchum entered an administrative order appointing the Honorable Donald H. Cookman, Judge of the 22nd circuit; the Honorable James Rowe, Judge of the 11th circuit; and the Honorable Christopher C. Wilkes, Judge of the 23rd circuit, to serve under the provisions of Rule 29 effective Oct. 10, 2012, and further appointed the Honorable James H. Young Jr., Judge of the 24th circuit, to serve under the provisions of Rule 29 effective Jan. 1, 2013.[7] The Chief Justice further ordered that Judge Wilkes would serve as the chair of the division for a three-year term.[8]

As noted above, this Court is a new division within West Virginia's Circuit Courts, designed to handle complex commercial litigation cases between businesses. The Court is governed and authorized primarily by West Virginia Code § 51-2-15 and new Trial Court Rule 29. Attorneys and judges may *42 become acquainted with the practical side of getting a case to business court, as well as navigating the new court, with a reading of the new Trial Court Rule 29.

Although administrative management of cases will be done through the central office located at the Berkeley County Judicial Center, Business Court cases will be heard throughout the state by Business Court Judges. The rule divides the state into seven regions by grouping circuits together in a manner that follows the requirements of West Virginia Code § 51-2-15(b).[9]

The rule does not limit jurisdiction of the circuit courts, but rather creates a referral process, which allows a business case to be assigned to a judge trained in complex business court litigation.[10] The type of cases the Business Court Division will handle is addressed by the new rule:

(a) "Business Litigation" -- one or more pending actions in circuit court in which:

the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities; and the dispute presents commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable; and the principal claim or claims do not involve: consumer litigation, such as products liability, personal injury, wrongful death, consumer class actions, actions arising under the West Virginia Consumer Credit Act and consumer insurance coverage disputes; non-commercial insurance disputes relating to bad faith, or disputes in which an individual may be covered under a dcommercial policy, but is involved in the dispute in an individual capacity; employee suits; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; and administrative disputes with government organizations and regulatory agencies, provided, however, that complex tax appeals are eligible to be referred to the Business Court Division.

W.Va. T.C.R. § 29.04(a).

Litigation between businesses is at the center of the Business Court Division's purpose. Cases which have a high level of complexity, novel issues, or other issues requiring specialized treatment are likely to land on the Business Court docket if requested. The Business Court Judges recognize that business cases present matters that differ from other types of cases and will attempt to resolve these concerns in a judicious and timely manner. The judges have undertaken and will continue to undertake special training in areas such as the administration and governance of business entities, complex discovery of electronically stored information, mediation of commercial disputes, as well as other issues unique to litigation between businesses. The techniques, which the judges are being trained in, such as judicially led mediation, provide a method for quicker, less costly, resolution of the cases assigned.

*43 So, with this in mind, one may ask how to get a case to the Business Court Division. The Business Court Division is given no original jurisdiction, and a case must be referred to the Division. [11] This referral process is relatively simple.

Any party or the judge may file a motion to refer a case to the Business Court Division. A judge can file a motion to refer at any time; however, a party must file the motion within the first three months of filing the action. [12] After a reply period, the circuit clerk will transmit the motion and all reply memoranda to the Chief Justice for review. [13] The Chief Justice must promptly decide the motion or direct the Business Court Division to conduct a hearing and make recommendations regarding his decision. Once a case has been referred to the Division, management of the case will be conducted by the Business Court Judge assigned to the case and the Business Court Division Central Office in the Berkeley County Judicial Center.

Rule 29 contemplates the Business Court Division Judge, generally, hearing the case in the county in which it was filed. [14] However, if the designated Business Court judge does not sit in the county where the business litigation is pending, the Division Chair may submit a request to the Chief Justice that the assigned Business Court Judge be authorized to preside over the action in any county that is *within the same Business Litigation Assignment Region.* [15]

The Business Court Division is designed as a "rocket docket," attempting to resolve cases within 10 months. [16] Along these lines, the Business Court Division is in the process of developing case management "methodologies" for the efficient resolution of cases, including more complex discovery and scheduling orders, case management techniques, and mediation possibilities. [17]

Like most in the business and legal communities, the Business Court Judges believe this development will prove to be a positive change for West Virginia in a variety of ways -- much like it has been in other states that have instituted a business court.

Business litigants should be excited that West Virginia will be providing businesses an opportunity to have a specially trained judge resolve complex business issues. With the Business Court Division, West Virginia is now becoming one of the best legal environments for businesses in the country.

Footnotes

a1 **Judge Christopher C. Wilkes** is a Circuit Judge for West Virginia's 23rd Judicial Circuit and Chairman of the Business Court Division. He is a graduate of West Virginia University and Ohio Northern University College of Law. He has been serving as a judge since January 1, 1993 and is a member of the American College of Business Court Judges.

1 H.B. 4352, 2010 Reg. Sess. (W.Va. 2010).

2 At the June 2010 Administrative Conference, the West Virginia Supreme Court of Appeals created the Business Court Committee. The Business Court Committee was led by the Chairman, Judge Darrell Pratt. The other members of the committee were Judge Donald Cookman; Judge Rudolph J. Murensky, II; Judge James J. Rowe; Judge Susan B. Tucker; and Judge Christopher Wilkes. This group's diligent and thorough work was vital to the creation of the new Business Court Division.

3 For the full mission statement see, Resolution of the committee setting mission, comprehensive plan and vision, adopted Oct. 28. 2010; W.Va. Judiciary, Press Releases (Oct. 28, 2010) <www.courtswv.gov>.

4 *See*, W.Va. Judiciary, Press Releases (Oct. 15, 2010) < www.courtswv.gov>.

5 Order Re: Approval of Trial Court Rule 29. Relating to the Business Court Division (W.Va., Sept. 11. 2012). *See also*, W.Va. Judiciary, Press Releases (Sept. 11, 2012) <www.courtswv.gov>.

6 *See*, W.Va. Judiciary, Press Releases (Oct. 10, 2012) < www.courtswv.gov>.

7 Order Re: Appointment of Circuit Judges in Accordance with Rule 29.02 of the West Virginia Trial Court Rules Relating to the Business Court Division (W.Va., Sept. 11, 2012).

8 Id.

9 W.Va. TCR 29.04(b); *see also*, W.Va. Judiciary, Lower Courts, Business Court Division, <courtswv.gov>.

10 *See*, W.Va. TCR 29.06.

11 *See*, W.Va. TCR 29.03; 29.06; 29.07.

12 W.Va. T.C.R. 29.06(a)(2).

13 *See*, W.Va. TCR 29.06.

14 *See*, W.Va. TCR 29.07(b).

15 Id.; *see also*, W.Va. Judiciary, Lower Courts, Business Court Division, <courtswv.gov>.

16 This terminology was used by Justice Robin Davis at the opening ceremony of the Business Court Division on October 10, 2012, and is contemplated by the time standard of 10 months set by W.Va. TCR 29.08(g).

17 *See*, W.Va. TCR 29.08(a).

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SOUTHCO DEVELOPMENT, LLC

Plaintiff,

V. CIVIL ACTION NO. 16-C-575

MONONGALIA COUNTY DEVELOPMENT AUTHORITY, LARSON DESIGN GROUP, INC. AND HOLLY CHILDS,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of March, 2017, I served the foregoing **THE DEFENDANT, THE MONONGALIA COUNTY DEVELOPMENT AUTHORITY'S REPLY MEMORANDUM TO DEFENDANTS' MOTION TO REFER MATTER TO BUSINESS COURT DIVISION**, upon the following, via United States Mail, postage prepaid:

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